Supreme Court, U.S.
FILED
07-520 OCT 17 2007
OFFICE OF THE CLERK

No.

In The
Supreme Court of the United States

DAVID RANDAL WILLIAMS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

ROBERT L. BOOKER
STAR STATION, SUITE 360
9 MUSIC SQUARE SOUTH
NASHVILLE, TENNESSEE 37203
TELEPHONE: (615) 473-9013
TELECOPIER (760) 295-8566

Attorney for Petitioner

October 17, 2007

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

I. Should the Supreme Court resolve an apparent conflict among the Circuit Courts to comport with the standard adopted by the Second Circuit in *Alessi v. United States*, 593 F.2d 476, 479 (2nd Cir. 1979), which interprets this Court's precedent in *Spies v. United States*, 317 U.S. 492, 496-500 (1943), and clarify that the felony offense of tax evasion requires a *mens rea* element evidencing some willful intent by the defendant to mislead, deceive, conceal or defraud as a part of the definition of the term "to evade," and extend the holding in *Cheek v. United States*, 498 U.S. 192 (1991) so that the alleged "affirmative act" must interfere in some manner with the IRS's ability to accurately calculate, collect and enforce any taxes due?

II. Is a devout Christian man, who represented himself before the IRS and the federal district court in an effort to challenge the scope and constitutionality of the federal tax laws, properly subject to a felony conviction for tax evasion even though he filed documents and sworn affidavits that explained his legal and religious objections; and, each year, he accurately reported absolutely all of the information necessary for the IRS to calculate any taxes due; and there was no fraud, deception or other attempt to mislead and/or conceal income, which was alleged in the indictment or even referenced during his Rule 11 Plea Colloquy?

III. Should the Supreme Court clarify the procedure for the appellate courts regarding whether a three-judge panel is required to properly conduct the "plain error" analysis articulated by this Court in *United States v. Olano*, 507 U.S. 725, 731 (1993), when the Court of Appeals seeks to summarily dismiss issues related to an alleged jurisdictional defect in the defendant's Rule 11 Plea Colloquy, which failed to properly advise him of the offense of felony tax evasion and there was a constitutionally deficient factual basis for the district court to accept his guilty plea because the Indictment charged and the trial court's colloquy alleged only that **"such failure to file [tax returns] was a willful attempt to evade a lawfully imposed duty"**? *See* Appendix E, at Pages 39a-40a.

IV. In light of the Supreme Court's majority opinion in *Nguyen v. United States*, 539 U.S. 69, 83 (2003), is it constitutionally permissible for only a two-judge panel of the Ninth Circuit Court of Appeals to summarily dismiss issues, without conducting any "plain error" analysis, related to the appellant's claim that there is a jurisdictional defect in his Rule 11 Plea Colloquy, which deprived him of his rights to Due Process of Law and Equal Protection Under the Law because the district court failed to advise him of the nature and cause of the charge against him for felony tax evasion; and there was not a constitutionally sufficient factual basis for the trial court to accept his plea of guilty where the alleged "affirmative act" was merely that "such failure to file [tax returns] was a willful attempt to evade a lawfully imposed duty?"

LIST OF PARTIES

The parties to the instant appeal are listed on the cover page to this Petition for Writ of Certiorari in that Petitioner was charged by Indictment in the United States District Court for the Southern District of California. The Internal Revenue Service (IRS) was the agency that provided assistance and investigation to the United States Attorney; and the counsel listed below as follows have represented Petitioner:

Dennis B. Atchley
402 N. Nevada St.
Oceanside, CA 92054

Georgia K. McMillen
P. O. Box 1512
Wailuku, Hawaii 96793

Federal Public Defender
225 Broadway, Suite 900
San Diego, CA 92101

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF PARTIES iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES vii

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTIONAL STATEMENT 1

CONSTITUTIONAL AND
STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING CERTIORARI 7

ARGUMENT 8

CONCLUSION 13

APPENDIX:

Appendix A: Memorandum Order dated July 19, 2007 from the Ninth Circuit Court of Appeals, Case No. 06-50304 ..... 1a

Appendix B: Order Dismissing Issues on Appeal dated December 21, 2006 from the Ninth Circuit Court of Appeals 4a

Appendix C: Judgment and Commitment (Probation Violation) dated April 24, 2006 from the United States District Court for the Southern District of California 6a

Appendix D: Judgment and Commitment (Original) dated January 28, 2005 from the United States District Court for the Southern District of California 14a

Appendix E: Transcript of Disposition Hearing dated September 29, 2004 from the United States District Court for the Southern District of California 22a

Appendix F: Indictment dated April 13, 2004 from the United States District Court for the Southern District of California, Case No. 04-CR-0992 ..... 48a

Appendix G: Statutes Under Review

Title 26 United States Code § 7201, Tax Evasion (Felony) 54a

Title 26 United States Code § 7203, Failure to File/Pay (Misdemeanor) 54a

Title 26 United States Code § 7207, Filing False Return (Misdemeanor) 55a

Appendix H: Constitutional Provisions

Constitution of the United States of America, Amendment I 56a

Constitution of the United States of America, Amendment IV 56a

Constitution of the United States of America, Amendment V 56a

Constitution of the United States of America, Amendment VI 57a

Appendix I: Other Authority

United States Court of Appeals, 9th Circuit Rule 27-1, (3)(c) 58a

TABLE OF AUTHORITIES

Cases

Alessi v. United States,
593 F.2d 476 (2nd Cir. 1979) 10, 11

Cheek v. United States,
498 U.S. 192 (1991) 9, 11

Nguyen v. United States,
539 U.S. 69 (2003) 3, 11

Spies v. United States,
317 U.S. 492 (1943) 8, 11

United States v. Carlson,
235 F.3d 466 (9th Cir. 2000) 12

United States v. Dominguez-Benitez,
542 U.S. 74 (2004) 3, 7, 11, 12

United States v. Doyle,
956 F.2d 73 (5th Cir. 1992) 8, 10

United States v. McGill,
964 F.2d 222 (3rd Cir. 1992) 8, 9

United States v. Olano,
507 U.S. 725 (1993) 3, 7, 11, 12

United States v. Payne,
978 F.2d 1177 (10th Cir. 1992), *cert. denied*, 508
U.S. 950 (1993) 12

Statutes

26 U.S.C. § 7201 ..... 2, 3, 12

26 U.S.C. § 7203 ..... 2, 3

26 U.S.C. § 7207 ..... 2, 3

28 U.S.C. § 1254 1

28 U.S.C. § 1291 2

United States Constitutional Provisions

Fifth Amendment 2, 8

First Amendment 2, 8

Fourth Amendment 2, 8

Sixth Amendment 2, 8

Rules

9th Cir. R. 27-1 ..... 3, 4, 6, 11

S. Ct. R. 13.1 1

PETITION FOR WRIT OF CERTIORARI

COMES NOW, Petitioner, David Randal Williams, and hereby respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the unpublished judgment of the United States Court of Appeals for the Ninth Circuit, which affirmed the Judgment and Commitment of the United States District Court for the Southern District of California.

OPINIONS BELOW

The opinions and orders entered in this case are unreported. A copy of the July 19, 2007 Memorandum Decision of the United States Court of Appeals for the Ninth Circuit, which affirmed Petitioner's conviction for Felony Tax Evasion, is contained in Appendix A, Page 1a. A copy of the December 21, 2006 Order Dismissing the Issues on Appeal is contained in Appendix B, Page 4a. A copy of the Order and Judgment-Probation Violation-USDC Southern District is contained in Appendix C, Page 6a. A copy of the January 28, 2005 Judgment and Commitment-USDC Southern District of California is contained in Appendix D, Page 14a. A copy of the entire Rule 11 Plea Colloquy before the United States District Court is contained in Appendix E, Page 22a.

JURISDICTIONAL STATEMENT

Jurisdiction of this Court is invoked under Title 28 United States Code § 1254. The Memorandum Decision of the Ninth Circuit Court of Appeals was filed and entered on July 19, 2007. This Petition is timely pursuant to Supreme Court Rule 13.1.

Jurisdiction was invoked before the Ninth Circuit Court of Appeals pursuant to 28 United States Code § 1291; and Petitioner was originally prosecuted in the United States District Court for the Southern District of California for an alleged violation of 26 United States Code § 7201.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitutional and Statutory Provisions relied upon in the instant Petition, the First, Fourth, Fifth, and Sixth Amendments to the United States Constitution and 26 United States Code §§ 7201, 7203, and 7207 are set forth in the Appendix at Appendix H, Page 56a and Appendix G, Page 54a.

STATEMENT OF THE CASE

Petitioner, David Randal Williams, is a devout Christian man, who is able to trace his ancestry to the framers for the Constitution of the United States. Without providing all of the details for his arguments, Petitioner claimed that the assignment of a social security and other identifying numbers violated his religious beliefs; and the system for collection and enforcement of taxes denied him a representative form of government. Petitioner challenges his conviction for felony tax evasion from the United States District Court for the Southern District of California and subsequent sentence for violation of the terms of his Supervised Release, which was followed by the instant appeal to the Ninth Circuit Court of Appeals.

Petitioner seeks review of the Ninth Circuit decision, which was entered on July 19, 2007 in its Memorandum Order, Case No. 06-50304. He specifically challenges the court's refusal to conduct the *Olano* "plain error" analysis by a three-judge panel due to 9th Circuit Rule 27-1, advisory committee note (3)(c). A true and correct copy of the Ninth Circuit Court's Memorandum Order is attached hereto and incorporated herein as Appendix A, Pages 1a-3a. Petitioner contends that the dismissal of his issues on appeal, without a proper "plain error" analysis by only a two-judge panel, is in direct conflict with this Court's decision in *Nguyen v. United States*, 539 U.S. 69, 83 (2003); *United States v. Olano*, 507 U.S. 725, 731-735 (1993) and *United States v. Dominguez-Benitez*, 542 U.S. 74, 81-83 (2004).

Petitioner was originally charged by Indictment with only four (4) counts of Felony Tax Evasion in violation of 26 United States Code § 7201. Appendix F, at Pages 48a-53a. Significantly, Petitioner was not charged with either of the misdemeanor offenses for Willful Failure to File Income Tax Returns or Willful Failure to Pay Taxes pursuant to 26 United States Code § 7203. *Id.* Petitioner was also not charged with any counts in the Indictment for Filing a False or Fraudulent Return, which would have constituted the misdemeanor violation of Title 26 United States Code § 7207. Appendix G, Pages 54a-55a.

In the instant case, the Indictment alleged only that Petitioner **"caused his employer to fail to withhold income taxes...[and he] failed to file a U.S. individual tax return for tax year 2000. All in violation of Title 26 United States Code,**

Section 7201." Appendix F, at Page 53a. The trial court's Rule 11 Plea Colloquy repeatedly confirmed that Petitioner only **"agree that such failure to file [his tax return] was a willful attempt to evade a lawfully imposed duty".** *See* Appendix E, Pages 25a, 38a, 39a-40a. When Petitioner attempted to challenge this constitutional error and alleged that a jurisdictional defect exists from his Rule 11 Plea Colloquy, a two-judge panel of the Ninth Circuit Court of Appeals summarily dismissed these issues without any "plain error" analysis and affirmed Petitioner's Felony Tax Evasion conviction. Appendix B, Pages 4a-5a. *See also* 9th Circuit Rule 27-1 (3)(c), Appendix H, Page 58a.

The Ninth Circuit Court's dismissal of the Petitioner's issues on appeal, which were related to his efforts to obtain correction of the structural error during the plea colloquy, "foreclosed relief altogether" because the two-judge panel of that court refused to conduct any "plain error" analysis at all prior to ruling upon the government's motion to dismiss issues. Appendix B, at Page 4a. The Ninth Circuit also refused to address whether the term "to evade" includes a *mens rea* element evidencing some willful intent to mislead, deceive, defraud or conceal income and whether the alleged "affirmative act" must interfere in some manner with the IRS's ability to accurately calculate any taxes due. Appendix B, Page 5a.

Count 4 of the Indictment only alleged in pertinent part that:

> a. During calendar year 2000, defendant DAVID R. WILLIAMS caused his employer to

> fail to withhold federal income taxes from the $212,070 in wages and other compensation paid to defendant WILLIAMS.
>
> b. On or about April 15, 2001, defendant DAVID R. WILLIAMS failed to file a U.S. individual income tax return for the tax year 2000. All in violation of Title 26 United States Code, Section 7201. *See* Appendix F, at Page 53a.

Following several appearances before the United States District Court for the Southern District of California, Chief Judge Irma E. Gonzales presiding, wherein Petitioner represented himself and attempted to explain his legal and religious objections to the trial court's assertion of jurisdiction over the matter, Petitioner entered a Plea of Guilty to Count 4 of the Indictment for Felony Tax Evasion. Appendix E, Page 44a. At his Disposition Hearing on September 29, 2004, the trial court conducted its Rule 11 Plea Colloquy with Petitioner, however the court repeatedly asserted, **"And do you agree that such failure to file [a Tax Return for calendar year 2000] was a willful attempt to evade a lawfully imposed duty?"** Appendix E, Pages 39a-40a.

Petitioner was sentenced to serve a term of incarceration for one year and a day; and the trial court imposed a term of Supervised Release for a period of two years on January 28, 2005. Appendix D, Pages 14a-16a. After he served the term of incarceration, United States Probation filed an Affidavit alleging a violation of the Conditions of Supervised Release. Hearings were conducted on

March 20, 2006 and April 20, 2006; and Petitioner was found to have violated the Conditions of Supervised Release. The District Court sentenced Petitioner to serve an additional term of incarceration for six months and imposed a further Special Condition that required Mental Health Treatment. Appendix C, Pages 6a-13a.

Petitioner timely filed a document, which he captioned **"Notice of Motions-Right of Allocution, Objecting to Sentencing in the Nature of a Writ of Error-Notice of Appeal,"** which the trial court treated as a *pro se* Notice of Appeal. Appendix A, Pages 1a-3a. After Petitioner's counsel filed Appellant's Opening Brief to the Ninth Circuit Court of Appeals and asserted that the trial court had committed "plain error" during the Rule 11 Plea Colloquy, the government filed a Motion to Dismiss Issues on Appeal. Without conducting any "plain error" analysis of the alleged constitutional error, the Ninth Circuit dismissed the first four issues on appeal; and ordered the filing of a replacement brief. Appendix B, Pages 4a-5a.

The Ninth Circuit's Order, which dismissed the issues related to his assertion of a jurisdictional defect in the Rule 11 Plea Colloquy, was submitted to and ruled upon by only a two-judge panel; and the Ninth Circuit's Memorandum Opinion entered on July 19, 2007 held that Petitioner was not entitled to have a three-judge panel decide the government's Motion to Dismiss pursuant to 9th Circuit Rule 27-1, advisory committee note (3)(c). Appendix A, Pages 1a-3a; Appendix H, Page 58a. Accordingly, the Ninth Circuit Court never conducted any "plain error" analysis; and

the court held that Petitioner was not entitled to have a three-judge panel even consider the issue of whether the asserted constitutional error in his Rule 11 Plea Colloquy was jurisdictional and prejudicial. Appendix A, Page 3a.

REASONS FOR GRANTING CERTIORARI

The instant Petition for Writ of Certiorari raises important, constitutional issues related to whether a defendant, who asserts legal and religious objections to the enforcement and collection of federal income taxes but provides absolutely all of the information necessary for the Internal Revenue Service (IRS) to accurately calculate any taxes due, can properly be convicted of felony tax evasion; and should the Supreme Court resolve conflicts among the circuits by clarifying that an appellant is entitled to the "plain error" analysis from *Olano* and *Dominguez-Benitez* by a three-judge panel for an alleged jurisdictional defect in his Rule 11 Plea Colloquy when there is a constitutionally deficient factual basis for the district court to accept his guilty plea without a *mens rea* element evidencing some willful intent to mislead, deceive, defraud or conceal income that interferes with the IRS's ability to accurately calculate and enforce any taxes due.

The federal circuit courts have expressed a divergence of views and opinions regarding the meaning of the "affirmative act" requirement. Although each of the circuits agrees that an "affirmative act" is required as a necessary element to the offense of Felony Tax Evasion, there appears to be confusion and an absence of uniformity. For example,

the Third Circuit has held that the attempted offense of tax evasion's "affirmative act" requirement in a prosecution for evasion of tax assessment "is satisfied with [the] filing of [a] false return." *United States v. McGill*, 964 F.2d 222, 230 (3rd Cir. 1992). By contrast, however, the Fifth Circuit has held that a "Defendant charged with the offense of felony tax evasion, for failing to file timely tax returns and submitting W-4 forms with inaccurate information, was entitled to [an] instruction on [the] lesser-included offense". *United States v. Doyle*, 956 F.2d 73, 76 (5th Cir. 1992).

Implicit also in the instant Petition are important constitutional questions involving Petitioner's First Amendment Rights of Religious Expression and Right to Redress Grievances, his Fourth Amendment Right Against an Unreasonable Seizure of his Person and Property, his Fifth Amendment Rights to Due Process of Law and Equal Protection Under the Law, and his Sixth Amendment Right to Know the Nature and Cause of the Charges Against Him. Appendix H, Pages 56a-57a. Petitioner respectfully asserts that the Supreme Court should resolve the wide disparity of standards applicable among the various circuits; and this Court should clarify the proper procedure for conducting a "plain error" analysis by a three-judge panel of circuit court judges.

ARGUMENT

As suggested above, there is a wide divergence of opinions and standards among the various circuits regarding whether the "affirmative act" requirement from the Supreme Court's opinion in *Spies v. United States*, 317 U.S. 492, 499 (1943) necessarily includes a

further *mens rea* element evidencing some intent to mislead, deceive, defraud or conceal income that interferes with the IRS's ability to accurately calculate, enforce and collect any taxes due. In fact, it may be that some confusion arose following this Court's decision in *Cheek v. United States*, 498 U.S. 192, 194 (1991), when the majority explained "This case turns on the meaning of the word 'willfully' as used in §§ 7201 and 7203." *Id.*

To the extent that *Cheek v. United States*, addressed any *mens rea* element for the offense of felony tax evasion, it is important to remember that *Cheek* was fundamentally a jury instruction case, which raised the specific question of whether the defendant's subjective beliefs about the applicability and constitutionality of the federal tax laws were applicable to him, and the Supreme Court declined to apply an "objectively reasonable" standard. *Id.* 498 U.S. at 200-202. It is important to note that both felony tax evasion and the misdemeanor offense of Willful Failure to File include the "willfulness" element. However, in the instant case, the trial court clearly believed, and the Indictment only alleged that Petitioner's "failure to file [the tax return] was a willful attempt to evade a lawfully imposed duty." *See* Appendix E, at Pages 39a-40a; Appendix F, at Page 53a.

Although the standard applied by the Southern District of California seems constitutionally deficient on its face, this standard actually comports with the Third Circuit's explanation that "If the false filing is shown to be willful, the offense [of felony tax evasion] is complete with the filing." *United States v. McGill*,

964 F.2d at 230. An entirely different result is reached however, when the Fifth Circuit's analysis of the "affirmative act" requirement is applied because that court has held that the willful failure to file tax returns, even combined with providing false information in the defendant's W-4 Form, does not constitute the offense of Felony Tax Evasion. *United States v. Doyle*, 956 F.2d at 76. *See also* Appendix F, Page 53a.

The Fifth Circuit's analysis in *Doyle* is similar to the Second Circuit Court of Appeals' decision in *Alessi v. United States*, wherein the defendant was found to have abandoned his direct appeal because the trial court lacked a sufficient factual basis to accept his guilty plea. *Alessi v. United States*, 593 F.2d 476, 479 (2nd Cir. 1979). Had Petitioner in the instant case appealed his conviction to the Second Circuit, following *Alessi*, he would have clearly been entitled to correction of the jurisdictional error because there was not a sufficient factual basis to accept his plea of guilty to Felony Tax Evasion. *Id.* Similarly, the Fifth Circuit's analytical approach would have resulted in correction of the "plain error" because, even if Petitioner willfully included false information in his W-4 Form, he would not have been guilty of Felony Tax Evasion. *United States v. Doyle*, 956 F.2d 73, 75-77 (5th Cir. 1992).

Indeed, it seems only logical that the offense of Felony Tax Evasion could not possibly be completed with only the same elements necessary for proving a violation of the misdemeanor offense, Filing a False Return. *Id.* It also seems improper that the government is able to avoid correction of a "plain

error" by filing a Motion to Dismiss Issues on Appeal within the Ninth Circuit; and a panel of only two judges is able to summarily dismiss those issues, without conducting the analysis articulated by this Court in *Olano* and *Dominguez-Benitez*. *United States v. Olano*, 507 U.S. 725, 731-735 (1993); *United States v. Dominguez-Benitez*, 542 U.S. 74, 81-83 (2004).

Petitioner respectfully requests that the Supreme Court extend the holding in *Cheek* in order to clarify that the very same "affirmative act" of committing the misdemeanor offense, Willful Failure to File or Filing a False Return, cannot serve as the sole factual basis for Felony Tax Evasion because such an interpretation would effectively nullify this Court's holding in *Spies*. Petitioner specifically requests that this Court adopt the standard applied by the Second Circuit in *Alessi v. United States*, 593 F.2d at 479, which held that the trial court committed reversible, plain error even though the defendant abandoned his direct appeal, because he was not properly advised of the nature and cause of the felony offense of tax evasion and there was a constitutionally deficient factual basis for the court to accept his plea of guilty. *Id.*

It is important for the Supreme Court to provide a uniform and appropriate procedure for the circuits to conduct a "plain error" analysis in response to a government's motion to dismiss issues on appeal and decide whether only a two-judge panel of the court is permitted to conduct such analysis. Petitioner suggests that this Court interpret 9th Circuit Rule 27-1 in light of the requirement of a three-judge panel as explained in *Nguyen v. United States*, 539 U.S. at 83, and explain the proper procedure for conducting the "plain error"

review articulated in *United States v, Olano*, 507 U.S. at 731-735 and *United States v. Dominguez-Benitez*, 542 U.S. at 81-83.

The Ninth and Tenth Circuits have provided less clear analytical standards for distinguishing between the misdemeanor offense of Failure to File and/or Filing a False Return than the approaches described above by the Second, Third and Fifth Circuits. The Tenth Circuit has explained that an "affirmative act" requires "more than the passive failure to file a tax return" when it becomes due; rather, it requires "a positive act of commission designed to mislead or conceal." *United States v. Payne*, 978 F.2d 1177, 1178 (10th Cir. 1992), *cert. denied*, 508 U.S. 950 (1993). While this standard might seem more clear at first glance, it does not resolve the issue of whether the filing a W-4 Form, which included inaccurate information and avoided withholdings by a defendant's employer, would serve to satisfy the same "affirmative act" requirement for Felony Tax Evasion.

By comparison, the Ninth Circuit has explained that "while the affirmative act must generally 'serve [ ] the purpose of evasion,' Congress did not intend 'to establish a hierarchy of attempts or evasions and limit § 7201 to those of a more deceitful or troublesome character.'" *United States v. Carlson*, 235 F.3d 466, 468-469 (9th Cir. 2000). Admittedly, the defendant in *Carlson* seems to have involved distinct affirmative acts such as using false social security numbers, misleading dates of birth and secret bank accounts, however this explanation does not address whether this standard would be consistent with the approach

prescribed by the Second, Third, Fifth or Tenth Circuits.

Unfortunately, since the Ninth Circuit refused to conduct any "plain error" analysis in the case at bar, it remains entirely unclear which approach the Ninth Circuit Court of Appeals would favor. Accordingly, Petitioner respectfully requests that this Court resolve the conflict among the circuits, clarify that there is a distinction between the misdemeanor offense and felony tax evasion, and provide a clear procedure for conducting the plain error analysis by a three-judge panel in response to the government's motion to dismiss issues related to an appellant's request for relief due to an alleged "plain error" defect in the trial court's Rule 11 Plea Colloquy.

CONCLUSION

Based upon the foregoing Petition, Petitioner respectfully prays that this Honorable Court grant a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit for the reasons set forth herein.

Respectfully submitted,

ROBERT L. BOOKER
Attorney for Petitioner
STAR STATION, Suite 360
9 Music Square South
Nashville, Tennessee 37203
Telephone: (615) 473-9013

October 17, 2007

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-50304

[Filed July 19, 2007]

UNITED STATES OF AMERICA, Plaintiff - Appellee,	)
v.	)
DAVID RANDAL WILLIAMS, a.k.a. David Randall Williams, Defendant - Appellant.	)

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California.
D.C. No. CR-04-00992-IEG.
Irma E. Gonzalez, Chief District Judge, Presiding.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted July 9, 2007**

JUDGES: Before: LEAVY, THOMAS and BERZON, Circuit Judges.

David Randal Williams appeals from the sentence imposed following the revocation of his supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Appellant contends that the district court abused its discretion by imposing conditions of supervised release requiring his participation in drug and alcohol treatment and mental health treatment. We disagree. Conditions of supervised release need not be reasonably related to the offense of conviction as long as they are reasonably related to the goals of supervised release. *See United States v. Wise,* 391 F.3d 1027, 1031 (9th Cir. 2004). We conclude that the district court did not abuse its discretion in determining that the challenged conditions were appropriate in this case. *See United States v. Lopez,* 258 F.3d 1053, 1056-57 (9th Cir. 2001). Furthermore, notice was not required before imposing the condition

---

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, appellant's request for oral argument is denied.

requiring participation in mental health treatment.[1] *See id.* at 1055-56.

Appellant also contends that he was entitled to have a three-judge panel of this court decide the government's October 2, 2006, motion to dismiss. We reject this contention. *See* 9th Cir. R. 27-1, advisory committee note (3)(c).

To the extent that appellant raises challenges to the underlying conviction, we conclude that such argument is outside the scope of this appeal.

AFFIRMED.

---

[1] We are not adjudicating at this time whether the orally imposed condition of supervised release requiring that the defendant take medications as part of a mental health treatment program was properly imposed. That issue was not raised in the briefs or by the district court.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-50304
D.C. No. CR-04-00992-IEG
Southern District of California, San Diego

[Filed December 21, 2006]

UNITED STATES OF AMERICA, Plaintiff - Appellee,	)
v.	)
DAVID RANDAL WILLIAMS, a.k.a. David Randall Williams, Defendant - Appellant.	)

ORDER

Before: McKEOWN and FISHER, Circuit Judges.

The first four issues presented in the appellant's opening brief relate to the judgment and commitment order entered on January 25, 2005. This appeal, however, is limited to the district court's April 20, 2006 order modifying the conditions of supervised release. The court, therefore, will not consider these four issues on appeal. Within 30 days of the filing date of this

order, appellant shall file a replacement opening brief, limited to the appealable issues. *See* Fed. R. App. P. 4(b); *see also United States v. Michlin*, 34 F.3d 896 (9th Cir. 1994).

Appellee's motion to dismiss for lack of jurisdiction is denied as moot.

06-50304

The answering brief is due within 30 days after service of the replacement opening brief. The optional reply brief is due within 14 days after service of the answering brief.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Number: 04CR0992-IEG

[Filed April 24, 2006]

UNITED STATES OF AMERICA	)
	)
v.	)
	)
DAVID RANDAL WILLIAMS (1)	)
	)

JUDGMENT IN A CRIMINAL CASE
(For Revocation of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

REGISTRATION No. 91680198

THE DEFENDANT:

***

☒ was found in violation of allegation(s) No. 1,2,3 OF THE OSC, after denial of guilt.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following allegation(s):

Allegation Number	Nature of Violation
1	Failure to be truthful and/or follow instructions (nv8)
2	Failure to participate in drug aftercare program (nv21)
3	Failure to provide financial disclosure (nv28)

Supervised Release is revoked and the defendant is sentenced as provided in pages 2 through 4 of this judgment. This sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

APRIL 20, 2006
Date of Imposition Sentence

/s/
HON. IRMA E. GONZALEZ
UNITED STATES DISTRICT JUDGE

Entered Date: 4/25/06

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of SIX (6) MONTHS.

* * *

SUPERVISED RELEASE

Upon releasee from imprisonment, the defendant shall be on supervised release for a term of:

TWO (2) YEARS, AS PREVIOUSLY IMPOSED, WITH SUPERVISED RELEASE TO TERMINATE ON 11/5/07.

MANDATORY CONDITIONS

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

The defendant shall cooperate as directed in the collection of a DNA samplo, pursuant to 18 USC 3583(d).

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10)the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11)the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12)the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13)as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

☒ File all delinquent tax returns as directed by the Internal Revenue Service and file all future returns in accordance with IRS guidelines.

☒ Submit to a search of person, property, residence, abode or vehicle, at a reasonable time and in a reasonable manner, by the probation officer.

* * *

☒ Report all vehicles owned or operated, or in which you have an interest, to the probation officer.

* * *

☒ Participate in a program of mental health treatment as directed by the probation officer, take all medications as prescribed by a psychiatrist/physician, and not discontinue any medication without permission. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. The defendant may be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.

* * *

☒ Provide complete disclosure of personal and business financial records to the probation officer as requested.

* * *

☒ Notify the Collections Unit of the U.S. Attorney's Office and the Internal Revenue Service of any interest in property obtained under any other name, or entity, including a trust, partnership or corporation after the execution of this agreement until the tax liability is paid in full. The defendant is also to notify all aforementioned agencies before transferring any interest in property owned directly or indirectly by the defendant.

* * *

☒ Cooperate with the Internal Revenue Service in the assessment and collection of income tax obligations for the years 1997 through 2003. Accordingly, the defendant is to pay income taxes due for 1997 through 2000 to the Internal Revenue Service in the amount of $323,357.00, plus penalties and interest in an amount to be determined by the Internal Revenue Service. Further, the defendant shall provide all information relating to same when requested by the probation officer.

☒ Participate in a program of drug or alcohol abuse treatment, including urinalysis testing and counseling, as directed by the probation officer. The defendant may be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.

☒ Cooperate as directed in the collection of a DNA sample.

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Number: 04CR0992-IEG

[Filed January 28, 2005]

UNITED STATES OF AMERICA)
)
v.)
)
DAVID RANDAL WILLIAMS)
)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or
After November 1, 1987)

REGISTRATION NO. 91680198
☐
THE DEFENDANT:
☒ pleaded guilty to count(s) 4 of the indictment.

* * *

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

Title & Section	Nature of Offense	Count Number
26 USC 7201	Tax evasion.	4

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ Count(s) Remaining is ☐ are ☒ dismissed on the motion of the United States.

☒ Assessment: $100

☒ Fine waived

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

January 27, 2005
Date of Imposition of Sentence

/s/
HON. IRMA E. GONZALEZ
UNITED STATES DISTRICT JUDGE

Entered Date: 1/31/05

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 1 year and 1 day.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be designated to either, Nellis in Nevada, Seagoville in Texas or Lompoc in California.

* * *

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☒ before / on March 14, 2005 @ 12:00 pm.

* * *

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
2 years.

MANDATORY CONDITIONS

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer,

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

☒ File all delinquent tax-returns as directed by the Internal Revenue Service and file all future returns in accordance with IRS guidelines.

☒ Submit to a search of person, property, residence, abode or vehicle, at a reasonable time and in a reasonable manner, by the probation officer.

* * *

☒ Report all vehicles owned or operated, or in which you have an interest, to the probation officer.

* * *

☒ Cooperate with the Internal Revenue Service in the assessment and collection of income tax obligations for the years 1997 through 2003. Accordingly, the defendant is to pay income taxes due for 1997 through 2000 to the Internal Revenue Service in the amount of $323,357.00 plus penalties and interest in an amount to be determined by the Internal Revenue Service. Further, the defendant shall provide all information relating to same when requested by the probation officer.

* * *

☒ Provide complete disclosure of personal and business financial records to the probation officer as requested.

* * *

☒ Notify the Collections Unit of the U.S. Attorney's Office and the Internal Revenue Service of any interest in property obtained under any other name, or entity, including a trust, partnership or corporation after the execution of this agreement

until the tax liability is paid in full. The defendant is also to notify all aforementioned agencies before transferring any interest in property owned directly or indirectly by the defendant.

☒ Participate in a program of drug or alcohol abuse treatment, including urinalysis testing and counseling, as directed by the probation officer. The defendant may be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.

* * *

RESTITUTION, FORFEITURE, OR OTHER PROVISIONS OF THE JUDGMENT

IT IS SO ORDERED the defendant shall pay restitution in the amount of $323,357.00 to be paid as directed by the Internal Revenue Service or your probation officer.

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF CALIFORNIA

NO. 04CR0992-IEG

[September 29, 2004]

UNITED STATES OF AMERICA,	)
Plaintiff,	)
	)
v.	)
	)
DAVID RANDAL-WILLIAMS,	)
Defendant.	)
	).

NO. 04CR0992-IEG
DISPOSITION HEARING
SAN DIEGO, CALIFORNIA
SEPTEMBER 29, 2004, 10:15 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE IRMA E. GONZALEZ

THE CLERK: NO. 1 ON CALENDAR, CASE 04CR0992, UNITED STATES OF AMERICA V. DAVID RANDAL-WILLIAMS FOR A DEPOSITION.

MR. AGUILAR: GOOD MORNING YOUR HONOR. GEORGE AGUILAR FOR THE UNITED STATES.

DEFENDANT WILLIAMS: GOOD MORNING, YOUR HONOR. DAVID RANDAL-WILLIAMS.

THE COURT: GOOD MORNING.

MR. AGUILAR: YOUR HONOR, THE PARTIES HAVE REACHED DEPOSITION IN THE MATTER AND WISH TO PRESENT A PLEA AGREEMENT FOR THE TAKING OF THE PLEA.

THE COURT: YES?

THE CLERK: DAVID R. WILLIAMS, IS THAT YOUR TRUE NAME?

DEFENDANT WILLIAMS: YES.

THE CLERK: MR. WILLIAMS, DO YOU NOW WITHDRAW FORMER PLEA OF NOT GUILTY TO COUNT 4 OF THIS INDICTMENT, WHICH CHARGES YOU WITH TAX EVASION, AND DO YOU WISH TO PLEAD GUILTY TO THIS CHARGE?

DEFENDANT WILLIAMS: YES

THE CLERK: HOW DO YOU NOW PLEAD TO COUNT 4 OF THIS INDICTMENT, ARE YOU GUILTY OR NOT GUILTY?

DEFENDANT WILLIAMS: I'M GUILTY.

THE CLERK: DO YOU WAIVE READING THAT COUNT?

DEFENDANT WILLIAMS: I WAIVE IT.

THE CLERK: WILL YOU PLEASE RAISE YOUR RIGHT HAND.

YOU DO SOLEMNLY SWEAR THAT THE EVIDENCE YOU SHALL GIVE IN THE CAUSE NOW BEFORE THE COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?

DEFENDANT WILLIAMS: SO HELP ME GOD, I DO.

THE COURT: IT'S ATTEMPTED TAX EVASION; IS THAT I THINK THAT'S --

MR. AGUILAR: IT IS, YOUR HONOR. THAT'S WHAT THE STATUTE CHARGES, YES.

THE COURT: OKAY.

MR. WILLIAMS, I NOTICE THAT YOUR ADVISORY ATTORNEY IS NOT HERE TODAY. AND DO YOU FEEL ABLE TO PROCEED BY YOURSELF TODAY.

DEFENDANT WILLIAMS: YES.

THE COURT: I'M GOING TO ASK YOU SOME QUESTIONS HERE TODAY AND EXPLAIN CERTAIN THINGS TO YOU. YOU PROBABLY

ALREADY HAVE AN IDEA OF WHAT I'M GOING TO GO OVER, BUT IF THERE'S SOMETHING YOU DON'T UNDERSTAND, LET ME KNOW, AND I'LL TRY TO EXPLAIN IT FURTHER.

DEFENDANT WILLIAMS: OKAY.

THE COURT: COUNT 4 OF THE INDICTMENT SAYS THAT ON APRIL I5TH, 2001, IN THE SOUTHERN DISTRICT OF CALIFORNIA, THAT YOU KNOWING AND BELIEVING THAT DURING THE CALENDAR YEAR OF 2000, THAT YOU AND YOUR SPOUSE HAD SUBSTANTIAL TAXABLE INCOME ON WHICH SUBSTANTIAL TAX IMPOSED BY THE PROVISIONS OF TITLE 26 OF THE UNITED STATES CODE WAS DUE AND OWING TO THE UNITED STATES; THAT YOU ATTEMPTED TO WILLFULLY EVADE AND DEFEAT TAX BY PERFORMING CERTAIN AFFIRMATIVE ACTS THAT ARE SET FORTH IN COUNT 4.

DO YOU UNDERSTAND THE CHARGE?

DEFENDANT WILLIAMS: YES, I DO.

THE COURT: OKAY. AND THE AFFIRMATIVE ACTS, WE'LL GO OVER THOSE IN A FEW MINUTES LATER.

MR. WILLIAMS, TELL ME HOW OLD YOU ARE. I DON'T KNOW IF YOU HAVE EVER TOLD ME.

DEFENDANT WILLIAMS: I'M 50.

THE COURT: OKAY. AND TELL ME WHAT YOUR EDUCATION IS AGAIN.

DEFENDANT WILLIAMS: HIGH SCHOOL DEGREE, THREE YEAR EQUIVALENT -- EQUIVALENT OF THREE YEARS OF COLLEGE.

THE COURT: AND IN THE LAST TWO DAYS HAVE YOU TAKEN ANY MEDICATION?

DEFENDANT WILLIAMS: I HAD TWO ALEVE THIS MORNING.

THE COURT: AND I ASSUME THAT DOESN'T AFFECT YOUR ABILITY TO UNDERSTAND WHAT IS HAPPENING HERE TODAY.

DEFENDANT WILLIAMS: I UNDERSTAND WHAT'S HAPPENING HERE.

THE COURT: OKAY. I HAVE IN FRONT OF ME THIS 15-PAGE DOCUMENT ENTITLED "PLEA AGREEMENT." HAVE YOU HAD AN OPPORTUNITY TO READ IT?

DEFENDANT WILLIAMS: YES, I HAVE.

THE COURT: AND HAVE YOU GONE OVER THIS PLEA AGREEMENT WITH YOUR -- AND I GUESS HE'S YOUR ADVISORY COUNSEL, BUT I FORGOT HIS NAME NOW.

DEFENDANT WILLIAMS: SEBASTIAN D'AMICO.

THE COURT: YES, MR. D'AMICO. DID YOU HAVE AN OPPORTUNITY TO DO THAT?

DEFENDANT WILLIAMS: I HAD A TELEPHONE CALL WITH HIM.

THE COURT: OKAY. AND THEN YOU REVIEWED IT. AND DID YOU TALK TO MR. AGUILAR ABOUT IT?

DEFENDANT WILLIAMS: EXTENSIVELY.

THE COURT: OKAY. SO YOU AND HE HAVE GONE OVER IT LIKE YOU SAY, EXTENSIVELY?

DEFENDANT WILLIAMS: YES, AND I UNDERSTAND IT.

THE COURT: OKAY. THAT WAS MY NEXT QUESTION. YOU UNDERSTAND THE AGREEMENT?

DEFENDANT WILLIAMS: YES, I DO.

THE COURT: DO YOU FEEL THAT YOU NEED ANYMORE TIME TO GO OVER THE AGREEMENT?

DEFENDANT WILLIAMS: NO, I DO NOT.

THE COURT: MR. WILLIAMS, DO YOU UNDERSTAND WHY YOU ARE HERE TODAY?

DEFENDANT WILLIAMS: YES, I DO.

THE COURT: DO YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO CONTINUE TO PLEAD NOT GUILTY. YOU HAVE THE RIGHT AT ALL TIMES TO BE REPRESENTED BY AN ATTORNEY AT NO COST TO YOU. YOU HAVE THE RIGHT TO A TRIAL BY JURY, AND THE JURY WOULD CONSIST OF 12 PEOPLE. AND THE 12 PEOPLE WOULD HAVE TO DECIDE UNANIMOUSLY WHETHER YOU ARE GUILTY OR NOT GUILTY OF THIS CHARGE AND THE OTHER CHARGES IN THE INDICTMENT.

YOU HAVE THE RIGHT TO CROSS-EXAMINE, THAT MEANS TO QUESTION ANY WITNESS WHO TESTIFIES AGAINST YOU. YOU HAVE THE RIGHT TO SUBPOENA YOUR OWN WITNESSES WHO TESTIFY IN YOUR BEHALF, AND YOU HAVE THE RIGHT TO REMAIN SILENT.

YOU DON'T HAVE TO TAKE THE WITNESS STAND OR HAVE ANYONE COMMENT ON YOUR FAILURE TO TAKE THE WITNESS STAND.

IF YOU GO FORWARD TODAY THOUGH, YOU GIVE UP THESE RIGHTS THAT I HAVE JUST GONE OVER WITH YOU. THAT MEANS I CAN FIND YOU GUILTY BECAUSE YOU TELL ME YOU'RE GUILTY. YOU GIVE UP YOUR RIGHT TO QUESTION THE GOVERNMENT'S WITNESSES AND TO PRESENT YOUR OWN WITNESSES.

DO YOU UNDERSTAND WHAT I'VE EXPLAINED TO YOU?

DEFENDANT WILLIAMS: I UNDERSTAND EACH AND EVERY ONE OF THEM.

THE COURT: OKAY. IS ANYONE FORCING YOU TO DO THIS?

DEFENDANT WILLIAMS: NO.

THE COURT: HAVE ANY THREATS BEEN MADE AGAINST IN ORDER TO MAKE YOU DO THIS?

DEFENDANT WILLIAMS: NO.

THE COURT: DO YOU -- HAVE ANY PROMISES BEEN MADE YOU OTHER THAN WHAT IS SET FORTH IN THIS PLEA AGREEMENT, ANY OTHER PROMISES?

DEFENDANT WILLIAMS: NO.

THE COURT: AND THIS AGREEMENT THAT YOU REACHED WITH THE GOVERNMENT, WAS THAT AFTER A LOT OF DISCUSSION WITH MR. AGUILAR?

DEFENDANT WILLIAMS: YES.

THE COURT: MR. AGUILAH, DO YOU BELIEVE THAT MR. WILLIAMS AND YOU HAVE COME TO THIS AGREEMENT BY A LOT OF GIVE AND TAKE?

MR. AGUILAR: YES, YOUR HONOR. IT'S BEEN NEGOTIATED. THE TERMS AND FACTS OF THE PLEA AGREEMENT HAVE BEEN NEGOTIATED.

THE COURT: OKAY. THANK YOU.

MR. WILLIAMS, DO YOU UNDERSTAND THAT THE PENALTIES THAT YOU ARE FACING ARE SET FORTH IN THE PLEA AGREEMENT THERE ON THE BOTTOM OF PAGE 4? THE MAXIMUM -- AND I HAVE TO ADVISE YOU WHAT THE MAXIMUM SENTENCE IS EVEN THOUGH THAT MAY NOT BE THE ULTIMATE SENTENCE.

DEFENDANT WILLIAMS: FIVE YEARS, $100,000 FINE, YEARS, $100 ASSESSMENT. YES, I'M AWARE. SUPERVISED

THE COURT: AND TWO TO THREE SUPERVISED RELEASE.

AND DO YOU UNDERSTAND SUPERVISED RELEASE IS A KIND OF PAROLE/PROBATION? DO YOU UNDERSTAND THAT?

DEFENDANT WILLIAMS: I UNDERSTAND.

THE COURT: THERE'S ALSO -- THERE COULD BE THE COST OF PROSECUTION AND MANDATORY RESTITUTION TO THE UNITED STATES. DO YOU UNDERSTAND THAT?

DEFENDANT WILLIAMS: I UNDERSTAND THAT.

THE COURT: NOW, MR. WILLIAMS, ONCE YOU PLEAD GUILTY HERE, YOU CAN'T COME BACK AND WITHDRAW YOUR GUILTY PLEA EVEN THOUGH YOU MAY RECEIVE A SENTENCE THAT

YOU DIDN'T EXPECT OR ONE THAT YOU DIDN'T AGREE TO BY SIGNING THIS PLEA AGREEMENT. DO YOU UNDERSTAND?

DEFENDANT WILLIAMS: I UNDERSTAND.

THE COURT: I'M NOT A PARTY TO THE PLEA AGREEMENT. I DON'T KNOW WHAT SENTENCE YOU WILL RECEIVE. I NEED TO MAKE SURE THAT I RECEIVE FROM YOU ANY PAPERS YOU WANT TO SUBMIT AT THE TIME OF SENTENCING, WHAT THE GOVERNMENT WILL SUBMIT. AND I'M GOING TO ASK FOR THE ASSISTANCE OF THE PROBATION OFFICE ALSO TO HELP IN COMING TO A CONCLUSION ABOUT WHAT SENTENCE YOU WILL RECEIVE. DO YOU UNDERSTAND THAT?

DEFENDANT WILLIAMS: I UNDERSTAND THAT.

THE COURT: NOW, THERE ARE CERTAIN GUIDELINES THOUGH THAT APPLY IN THIS CASE. AND I SEE THAT ON PAGE 9 THERE ARE SOME GUIDELINE CALCULATIONS THAT ARE SET FORTH AT THE TOP OF PAGE 9. THE BASE OFFENSE LEVEL, AT LEAST THIS IS WHAT'S BEING CALCULATED BASED ON THE TAX LOSS, IS A 16. MR. AGUILAR IS RECOMMENDING A THREE-LEVEL DOWNWARD ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY, AND THEN THERE MAY BE -- THERE ARE NO OTHER ADJUSTMENTS I GUESS UNDER THE PLEA AGREEMENT.

THE GOVERNMENT IS NOT GOING TO RECOMMEND ANY UPWARD OR DOWNWARD ADJUSTMENT, BUT YOU MAY SEEK ADJUSTMENT AT THE TIME OF SENTENCING. DO YOU UNDERSTAND THAT THIS IS THE AGREEMENT THAT YOU'VE RECEIVED WITH THE GOVERNMENT?

DEFENDANT WILLIAMS: I HAVE A QUESTION ON THAT LAST STATEMENT.

THE COURT: OKAY.

DEFENDANT WILLIAMS: AS FAR AS SEEKING -- WELL, I WOULDN'T BE SEEKING UPWARD ADJUSTMENTS, DOWNWARD ADJUSTMENTS. DO THOSE NEED TO BE IN THE U.S. ATTORNEY'S CUSTODY TWO WEEKS PRIOR TO A SENTENCING BY THIS COURT, OR ARE THEY DISCUSSED ORALLY WHILE WE'RE HERE?

THE COURT: YOU MEAN AT THE TIME OF SENTENCING?

DEFENDANT WILLIAMS: (NODS HEAD.)

THE COURT: I NEED THEM IN WRITING.

DEFENDANT WILLIAMS: I UNDERSTAND THAT.

THE COURT: AND YOU HAVE TO SERVE THE GOVERNMENT.

DEFENDANT WILLIAMS: SO WOULD IT BE THE STANDARD TWO WEEKS PRIOR?

THE COURT: THERE'S A LOCAL RULE ON SENTENCING WHEN SENTENCING PAPERS HAVE TO BE FILED AND MAYBE MR. AGUILAR -- IS IT 350? I CAN'T REMEMBER.

MR. AGUILAR: IT IS.

THE COURT: CAN YOU PROVIDE MR. WILLIAMS WITH A COPY OF THAT?

MR. AGUILAR: SURE.

THE COURT: IT MAYBE MORE THAN TWO WEEKS, MAYBE 18 DAYS. THERE IS A CERTAIN TIME PERIOD, AND YOU HAVE TO SERVE THE PROBATION OFFICE TOO. THEY GET THEIR REPORT IN ABOUT SIX WEEKS BEFORE THE SENTENCING DATE. YOU CAN FILE THE OBJECTIONS TO THEIR REPORT IF THERE ARE ANY FACTUAL OR GUIDELINE DISPUTES THAT YOU HAVE, AND THOSE HAVE TO BE FILED I THINK 18 DAYS BEFORE. YOU CAN -- AND THEN YOU MUST PROVIDE ME WITH A SENTENCING MEMORANDUM. AND IN THAT SENTENCING MEMORANDUM YOU CAN REQUEST ANY DEPARTURE OR ADJUSTMENTS THAT YOU WANT ME TO CONSIDER. BUT I CAN'T REMEMBER WHAT THE TIME FRAME IS FOR WHEN YOU NEED TO GET THEM IN TO ME.

DEFENDANT WILLIAMS: THANK YOU, YOUR HONOR. YOU'VE ANSWERED THAT QUESTION.

THE COURT: AND SENTENCING WILL PROBABLY -- WON'T BE UNTIL DECEMBER OR EVEN FARTHER OUT THAN THAT. AND WE COULD TALK ABOUT THE DATE IN A FEW MINUTES.

SO EVERYTHING SHOULD BE IN WRITING, SERVING THE UNITED STATES AND SERVING THE PROBATION OFFICE. IF MR. AGUILAR -- HOPEFULLY, HE'LL GET A COPY OF THAT LOCAL RULE, AND WE COULD GET A COPY. ANYWAY, WE'LL GIVE THAT TO YOU.

BUT IF YOU'RE SENTENCED ACCORDING TO THIS PLEA AGREEMENT, YOU GIVE UP YOUR RIGHT TO APPEAL THE SENTENCE. IS THAT PART OF THE AGREEMENT? LET'S SEE. IN EXCHANGE FOR THE GOVERNMENT'S CONCESSIONS IN THIS PLEA AGREEMENT, YOU WAIVE ANY RIGHT TO APPEAL OR TO COLLATERALLY ATTACK YOUR CONVICTION AND SENTENCE, INCLUDING ANY RESTITUTION ORDER UNLESS I IMPOSE A CUSTODIAL SENTENCE GREATER THAN THE HIGH END OF THE GUIDELINE RANGE RECOMMENDED BY THE GOVERNMENT. DO YOU UNDERSTAND THAT?

DEFENDANT WILLIAMS: I UNDERSTAND THAT.

THE COURT: RIGHT NOW, IF I WERE JUST TO LOOK AT THE PLEA AGREEMENT, A 16 MINUS 3 JUST WITHOUT ANY FURTHER ADJUSTMENTS WOULD BE AN ADJUSTED OFFENSE LEVEL OF

13, AND THE GUIDELINE RANGE IS 13 TO 18 MONTHS.

DEFENDANT WILLIAMS: THAT'S MY UNDERSTANDING AS WELL.

THE COURT: OKAY. SO AS LONG AS YOU -- AND, HOPEFULLY, YOU HAVE THE SENTENCING TABLE AVAILABLE TO YOU. THE PROBATION OFFICE ALSO SETS OUT ALL THAT IN THEIR REPORT.

AND THERE IS A PROVISION IN HERE WHICH SAYS THAT I CAN DETERMINE WHAT YOUR TAX LIABILITY IS. LET ME SEE. YOU AGREE TO EXECUTE PRIOR TO SENTENCING A CIVIL CLOSING AGREEMENT PURSUANT TO SECTION 7121 OF THE I.R.S. CODE FOR BACK TAXES DUE AND OWING FOR THE PERIODS 1997 TO 2003. YOU UNDERSTAND THAT'S YOUR OBLIGATION?

DEFENDANT WILLIAMS: YES, I UNDERSTAND THAT.

THE COURT: AND THE CLOSING AGREEMENT WILL REQUIRE, AND YOU FURTHER AGREE TO THE FILING OF FEDERAL INCOME TAX RETURNS FOR 2001 TO 2003. DO YOU UNDERSTAND THAT?

DEFENDANT WILLIAMS: I UNDERSTAND THAT.

THE COURT: AND THEN THERE ARE OTHER REQUIREMENTS THAT ARE SET FORTH. I'M NOT

GOING TO GO OVER ALL OF THEM, BUT THEY ARE ON THE BOTTOM OF PAGE 11, ALL OF PAGE 12, AND PART OF PAGE 13. HAVE YOU GONE OVER THAT?

DEFENDANT WILLIAMS: YES, I HAVE. AND THE CONCERN THAT I VOICED TO GEORGE THAT'S NOT REFLECTED IN THAT PAPERWORK IS THAT THESE CLOSING AGREEMENTS OFTENTIMES TAKE MORE TIME THAN WHAT'S PERCEIVED IN THAT PLEA AGREEMENT. AND THE DISCUSSION THAT WE HAD IS THAT WE WOULD CROSS THAT BRIDGE WHEN WE CAME TO IT.

THE COURT: RIGHT.

MR. AGUILAR, YOU DON'T HAVE ANY OBJECTION TO PUTTING OFF SENTENCING UNTIL SOME OF THIS IS IRONED OUT?

MR. AGUILAR: THAT'S CORRECT, YOUR HONOR.

THE COURT: AND THAT'S WHAT USUALLY HAPPENS. I KNOW IT TAKES A WHILE. I'VE HAD SOME OF THESE CASES. AND I'D RATHER KNOW THAT YOU'VE COMPLIED, AND THAT CERTAINLY WILL HELP THE SENTENCING AT THE END, MR. WILLIAMS. DO YOU UNDERSTAND THAT?

DEFENDANT WILLIAMS: I UNDERSTAND THAT.

THE COURT: OKAY. LET ME MAKE SURE. SUPERVISED RELEASE MEANS THAT NO MATTER WHAT THERE'S GOING TO BE SOME KIND OF SUPERVISION THAT YOU ARE GOING TO BE ON EITHER BY -- EITHER IN THE FORM OF PROBATION OR SUPERVISED RELEASE.

AND THERE ARE CERTAIN CONDITIONS THAT YOU'LL HAVE TO ABIDE BY, MANY OF THEM SIMILAR TO WHAT YOU'VE BEEN DOING NOW, THE PRETRIAL SERVICES CONDITIONS THAT I'VE IMPOSED -PRETRIAL CONDITIONS THAT I'VE IMPOSED. AND YOU UNDERSTAND YOU WILL HAVE TO OBEY ALL THE CONDITIONS. AND IF YOU VIOLATE ANY OF THE CONDITIONS DURING THAT PERIOD OF SUPERVISION, THEN I CAN ISSUE A WARRANT. YOU'D COME BACK HERE, AND YOU'D BE RIGHT BACK WHERE WE STARTED AND FACING CUSTODY. DO YOU UNDERSTAND THAT?

DEFENDANT WILLIAMS: I UNDERSTAND THAT.

THE COURT: OKAY. I'M GOING TO GO OVER WITH YOU, MR. WILLIAMS, SOME OF THE FACTS THAT YOU AGREE ARE TRUE.

I'M GOING TO START ON PAGE 3 AND GO ON TO PAGE 4.

YOU WERE EMPLOYED BY JOHN BURNHAM & COMPANY AS A SENIOR VICE PRESIDENT IN BURNHAM'S COMMERCIAL INSURANCE

DIVISION IN SAN DIEGO COUNTY FOR THE TIME PERIOD 1997 TO 2000?

DEFENDANT WILLIAMS: YES.

THE COURT: AND DURING THAT TIME PERIOD 1997 TO 2000, DID YOU OBTAIN AND RECEIVE WAGES, SALARY, AND COMPENSATION FROM THIS EMPLOYER THAT I'VE JUST REFERRED TO JOHN BURNHAM & COMPANY IN THE SOUTHERN DISTRICT OF CALIFORNIA?

DEFENDANT WILLIAMS: YES.

THE COURT: DURING THAT SAME TIME PERIOD, 1997 TO 2000, DID YOU KNOWINGLY AND INTENTIONALLY FAIL TO FILE FEDERAL INCOME TAX RETURNS?

DEFENDANT WILLIAMS: YES.

THE COURT: AND THIS INCLUDED THE INDIVIDUAL INCOME TAX RETURN FORM 1040 DECLARING THE WAGES, SALARY, AND COMPENSATION THAT YOU RECEIVED AS TAXABLE INCOME? IS THAT TRUE?

DEFENDANT WILLIAMS: TRUE.

THE COURT: IS IT TRUE AS SPECIFICALLY ALLEGED IN COUNT 4 OF THE INDICTMENT THAT BY APRIL 15TH, 2001, IN THE SOUTHERN DISTRICT OF CALIFORNIA, YOU KNOWINGLY AND INTENTIONALLY FAILED TO FILE A FEDERAL INCOME TAX RETURN DECLARING

THE WAGES, SALARY, AND COMPENSATION YOU RECEIVED IN CALENDAR YEAR 2000?

DEFENDANT WILLIAMS: YES.

THE COURT: AND DO YOU AGREE THAT SUCH FAILURE TO FILE WAS A WILLFUL ATTEMPT TO EVADE A LAWFULLY IMPOSED DUTY?

DEFENDANT WILLIAMS: YES.

THE COURT: THE TOTAL AMOUNT DUE AND OWING WHICH YOU EVADED DURING THE TIME PERIOD 1997 TO 2000 IS EQUAL TO THE COMMUNITY PROPERTY SHARE OF THE TOTAL AMOUNT TAX OWING AND DUE FOR THAT PERIOD, THAT IS $323,357; IS THAT TRUE?

DEFENDANT WILLIAMS: YES.

THE COURT: IS IT TRUE THAT YOU FAILED TO FILE FEDERAL INCOME TAX RETURNS DURING THE PERIOD -- THAT YOUR FAILURE TO FILE FEDERAL INCOME TAX RETURNS DURING THIS PERIOD CONSTITUTED AN AFFIRMATIVE ATTEMPT TO EVADE THIS ADDITIONAL SUBSTANTIAL AMOUNT OF INCOME TAX?

DEFENDANT WILLIAMS: YES.

THE COURT: AND DO YOU AGREE THAT YOU ACTED WILLFULLY AND THAT YOU VOLUNTARILY AND INTENTIONALLY VIOLATED THE LEGAL DUTY WHICH YOU KNEW OF TO FILE FEDERAL INCOME TAX RETURNS AND

ACCURATELY REPORT ALL OF THE INCOME YOU AND YOUR WIFE HAD EARNED DURING THAT PERIOD?

DEFENDANT WILLIAMS: YES.

THE COURT: ARE YOU PLEADING GUILTY TODAY BECAUSE, IN FACT, YOU ARE GUILTY AND FOR NO OTHER REASON?

DEFENDANT WILLIAMS: YES.

THE COURT: IF YOU WERE TO GO TO TRIAL, MR. WILLIAMS, THE GOVERNMENT WOULD HAVE TO PROVE BEYOND A REASONABLE DOUBT THE ELEMENTS OF THE CHARGE. AND THAT IS THE GOVERNMENT WOULD HAVE TO PROVE BEYOND A REASONABLE DOUBT THAT YOU OWED MORE FEDERAL INCOME TAX FOR THE CALENDAR YEAR 2000 THAN YOU DECLARED; THAT YOU KNEW THAT MORE FEDERAL INCOME TAX WAS OWED AND THEN WAS DECLARED BY YOU THAT YOU MADE AN AFFIRMATIVE ATTEMPT TO EVADE OR DEFEAT THE INCOME TAX. AND IN ATTEMPTING TO EVADE OR DEFEAT THE ADDITIONAL TAX, THAT YOU ACTED WILLFULLY, THAT IS THAT YOU VOLUNTARILY AND INTENTIONALLY VIOLATED A LEGALLY IMPOSED DUTY OF WHICH YOU WERE AWARE? DO YOU UNDERSTAND THAT'S WHAT THE GOVERNMENT WOULD HAVE TO PROVE BEYOND A REASONABLE DOUBT?

DEFENDANT WILLIAMS: I UNDERSTAND.

THE COURT: ONE LAST THING. THERE IS A SECTION IN THE PLEA AGREEMENT REGARDING BLAKELY V. WASHINGTON WHICH IS A SUPREME COURT CASE WHICH WAS RECENTLY DECIDED. THERE WERE CERTAIN MATTERS THAT A JURY HAS TO DETERMINE, AT LEAST RIGHT NOW THE STATE OF THE LAW IS THAT THE JURY MUST DETERMINE CERTAIN ISSUES. FOR EXAMPLE, IN THIS CASE PERHAPS HOW MUCH TAXABLE INCOME YOU HAD AND HOW MUCH TAX IS DUE AND OWING. BUT YOU'VE AGREED THAT BY PLEADING GUILTY, I CAN RELY ON YOUR ADMISSIONS HERE TODAY.

DEFENDANT WILLIAMS: I UNDERSTAND BLAKELY V. WASHINGTON, AND I UNDERSTAND I'M WAIVING THE RIGHT TO BLAKELY V. WASHINGTON.

THE COURT: OKAY. ANYTHING ELSE, MR. AGUII,AR, THAT YOU WANT TO COVER?

MR. AGUILAR: NO, YOUR HONOR. I BELIEVE THAT'S SUFFICIENT.

THE COURT: OKAY. MR. WILLIAMS, I WILL ACCEPT YOUR PLEA OF GUILTY HERE TODAY. I FIND IT'S FREELY AND VOLUNTARILY ENTERED, YOU UNDERSTAND YOUR RIGHTS, YOU HAVE KNOWINGLY AND INTELLIGENTLY WAIVED THOSE RIGHTS, THAT YOU'RE ARE COMPETENT TO ENTER A GUILTY PLEA, AND THAT THERE IS A FACTUAL BASIS FOR THE PLEA.

DEFENDANT WILLIAMS: YES, I DO.

THE COURT: NOW, I HAVE A SENTENCING DATE OF DECEMBER 20TH, BUT WE CAN PUT IT TO JANUARY, IF YOU WANT. THAT'S KIND OF A HECTIC TIME OF THE YEAR, BUT I'LL BE HERE.

MR. AGHILAR: I BELIEVE MR. WILLIAMS IS CORRECT THAT IT PROBABLY WILL NECESSITATE AT LEAST ONE CONTINUANCE OF THAT SENTENCING DATE, SO JANUARY WOULD BE GOOD.

THE COURT: DO YOU WANT TO DO IT MAYBE TOWARD THE MIDDLE OR THE END OF JANUARY? WOULD THAT BE BETTER?

MR. AGUILAR: THAT WOULD BE FINE.

DEFENDANT WILLIAMS: THAT'S FINE WITH ME.

THE COURT: JANUARY 18TH IS A TUESDAY. THE 17TH IS A LEGAL HOLIDAY, AND WE COULD DO IT ON THAT DAY.

DEFENDANT WILLIAMS: IS IT OKAY TO GET MY CALENDAR, YOUR HONOR?

THE COURT: SURE.

(OFF THE RECORD.)

THE COURT: OKAY. LET'S TALK ABOUT A DATE. I MENTIONED THE 18TH. WE COULD DO IT EITHER AT 9:00 IN THE MORNING OR 2:00 IN THE AFTERNOON. I HAVE ACTUALLY A BIG SENTENCING IN THE MORNING. WE COULD DO IT IN THE AFTERNOON AT 2:00.

DEFENDANT WILLIAMS: OKAY.

MR. AGUILAR: THAT'S FINE, YOUR HONOR.

THE COURT: AND IF YOU NEED A CONTINUANCE, JUST LET ME KNOW AHEAD OF TIME SO YOU DON'T HAVE TO COME DOWN HERE. AND MAYBE YOU CAN AGREE ON A DATE AND SUBMIT A STIPULATION --

MR. AGUILAR: YES, YOUR HONOR.

THE COURT: -- IF YOU NEED MORE TIME.

WHAT I USUALLY ASK A DEFENDANT TO DO, MR. WILLIAMS, AS SOON AS THERE'S A PLEA IS TO GO OVER AND TALK TO -- GO OVER TO THE PROBATION OFFICE, OR YOU CAN CALL AND SCHEDULE AN APPOINTMENT IF YOU WOULD RATHER DO THAT. THEY'RE ACROSS THE STREET, ACROSS FRONT STREET ON THE OTHER SIDE ON THE FOURTH FLOOR. I CAN'T REMEMBER WHAT FLOOR THEY ARE ON, OR YOU CAN CALL AND SCHEDULE AN APPOINTMENT. THERE'S NO RUSH SINCE THE SENTENCING IS NOT UNTIL JANUARY. SO WE CAN GIVE YOU A PHONE NUMBER TO CALL. AND MAYBE BY THEN THERE WILL BE A PROBATION

OFFICER ASSIGNED TO YOUR CASE, SO THAT WOULD BE BETTER.

DEFENDANT WILLIAMS: OKAY.

THE CLERK: THERE SHOULD BE A MAP IN THAT PODIUM.

THE COURT: UNDERNEATH? DOES THERE SAY SOMETHING ABOUT THE PROBATION OFFICE?

THE CLERK: YES.

THE COURT: SO WHY DON'T YOU CALL THAT NUMBER. THEY'RE GOING TO GET A MINUTE ORDER FROM ME SAYING THAT YOU HAD APPEARED HERE TODAY AND THAT YOU WERE ORDERED TO CALL THEM AND SCHEDULE AN APPOINTMENT. OKAY? AND IT WILL HAVE A SENTENCING DATE.

MR. WILLIAMS, DO YOU WITHDRAW YOUR MOTIONS THAT HAVE BEEN PREVIOUSLY FILED IN THIS CASE, ANY ONES THAT ARE STILL PENDING?

DEFENDANT WILLIAMS: YES.

THE COURT: AND THEN I VACATE THE MOTIONS IN LIMINE DATE AND THE TRIAL DATE AT THIS TIME.

AND WE FOUND THESE RULES: MOTIONS FOR DEPARTURE, THERE IS A -- AND THAT

WOULD INCLUDE ADJUSTMENTS -- ARE DONE 13 DAYS BEFORE SENTENCING. ANYWAY, SO HERE ARE ALL THE DATES. AND WE'LL JUST GIVE THIS TO YOU. IT'S IN OUR LOCAL RULES, SO YOU CAN HAVE THAT. THAT KIND OF GIVES YOU A SCHEDULE.

THE COURT: OKAY.

MR. AGUILAR: THANK YOU, YOUR HONOR.

DEFENDANT WILLIAMS: SEE YOU IN JANUARY.

THE COURT: THIS IS OFF THE RECORD.

(DISCUSSIONS OFF THE RECORD.)

THE COURT: THIS IS BACK ON THE RECORD. AND THE REASON I ASKED IS BECAUSE I GUESS PRETRIAL STILL HAS TO CONTINUE TO SUPERVISE YOU. I DON'T KNOW WHETHER WE SHOULD JUST TERMINATE PRETRIAL SUPERVISION AT THIS POINT. ANY OBJECTION TO THAT, MR. AGUILAR?

MR. AGUILAR: NO. I UNDERSTAND MR. WILLIAMS HAS BEEN COMPLYING WITH ALL HIS CONDITIONS, AND HE'S BEEN COOPERATIVE IN ATTEMPTING TO RESOLVE THE MATTER.

THE COURT: OKAY. SO WHAT I'LL DO, UNLESS YOU WANT TO CONTINUE –

DEFENDANT WILLIAMS: NO, MA'AM.

THE COURT: SO WHAT I'LL DO IS I'LL JUST SEND A MINUTE ORDER OVER TO PRETRIAL SERVICES SAYING THAT YOU NO LONGER HAVE TO REPORT TO THEM.

DEFENDANT WILLIAMS: THANK YOU

THE COURT: OKAY.

DEFENDANT WILLIAMS: MAY I ASK ONE LAST QUESTION?

THE COURT: YES.

DEFENDANT WILLIAMS: YOUR HONOR, DOES THIS COURT HAVE ANY DISCRETION REGARDING A PRESS RELEASE OF MY GUILTY PLEA? THE REASON I ASK THAT QUESTION IS IT'S MY FULL INTENT TO DISCLOSE FULLY MY WIFE'S FULL INTENT TO MAKE HER FULL AND COMPLETE RESTITUTION. SHE'S IN A VERY HIGH PROFILE JOB, AND I HAVE CHILDREN -- FOUR CHILDREN IN HIGH SCHOOL. AND SINCE THE PRESS RELEASE IS NOT AT TAX TIME, IT'S NOT AN INCENTIVE TO GET PEOPLE TO COLLECT. IF YOU HAVE ANY DISCRETION IN MINIMIZING THAT PRESS RELEASE OR AT LEAST TAKING THE COMPANY NAME OF JOHN BURNHAM & COMPANY OUT OF IT, IT WOULD BE APPRECIATED. I DON'T KNOW IF YOU HAVE ANY DISCRETION.

THE COURT: YES. LET'S GO OFF THE RECORD.

(DISCUSSIONS OFF THE RECORD.)

(ADJOURNED.)

—000---

CERTIFICATION

I HEREBY CERTIFY THAT I AM A DULY APPOINTED, QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE ON SEPTEMBER 29, 2004; THAT SAID TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE FORMAT USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF THE UNITED STATES JUDICIAL CONFERENCE.

DATED: APRIL 14, 2005, SAN CALIFORNIA.

/s/

ROSANNA HEYWOOD, OFFICIAL REPORTER
CSR NO. 7989

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Criminal Case No. 04 CR 0992 WQH

January 2003 Grand Jury

[Filed April 13, 2004]

UNITED STATES OF AMERICA, Plaintiff,	)
v.	)
DAVID RANDAL WILLIAMS, Defendant.	)

INDICTMENT
Title 26, U.S.C., Sec. 7201
Tax Evasion

~~SECRET~~
Unsealed 4/14/04

The grand jury charges:

TAX EVASION

(Count 1)

Introductory Allegations

1. At all times material herein unless otherwise noted:

Background

a. Defendant DAVID R. WILLIAMS was a U.S. citizen who resided in San Diego County, California.

b. Defendant DAVID R. WILLIAMS was employed by John Burnham & Company as a Senior Vice President in Burnham's Commercial Insurance Division in San Diego County, California.

Tax Evasion

2. On or about April 15, 1998, within the Southern District of California, defendant DAVID R. WILLIAMS, well knowing and believing that during the calendar year 1997 he and his spouse had substantial taxable income on which a substantial tax, imposed by the provisions of Title 26 of the United States Code, was due and owing to the United States, did willfully attempt to evade and defeat said tax by, among other things, committing the following affirmative acts of evasion, designed to conceal from and mislead proper officers of the United States as to their true and correct income and taxes due thereon:

a. On or about January 17, 1997, defendant DAVID R. WILLIAMS signed a 1997 Withholding Exemption Certificate (In Lieu of Form W-4) in which defendant declared that he incurred no liability for federal income taxes in 1997 and that he anticipated incurring no liability for federal income taxes in 1998.

b. On or about January 17, 1997, defendant DAVID R. WILLIAMS signed an Affidavit Of Citizenship And Domicile in which defendant declared that he was not a U.S. citizen.

c. On or about January 17, 1997, defendant DAVID R. WILLIAMS signed a Certificate of Foreign Status (W-8) in which defendant declared that he was not a U.S. citizen.

d. During calendar year 1997, defendant DAVID R. WILLIAMS caused his employer to fail to withhold federal income taxes from the $166,221 in wages and other compensation paid to defendant WILLIAMS.

e. On or about April 15, 1998, defendant DAVID R. WILLIAMS failed to file a U.S. individual income tax return for tax year 1997. All in violation of Title 26, United States Code, Section 7201.

TAX EVASION

(Count 2)

1. Paragraph 1 of Count 1 of this indictment is realleged and hereby incorporated by reference in Count 2 as though fully set forth herein.

2. On or about April 15, 1999, within the Southern District of California, defendant DAVID R. WILLIAMS, well knowing and believing that during the calendar year 1998 he and his spouse had substantial taxable income on which a substantial tax, imposed by the provisions of Title 26 of the United States Code, was due and owing to the United States, did willfully attempt to evade and defeat said tax by, among other things, committing the following affirmative acts of evasion, designed to conceal from and mislead proper officers of the United States as to their true and correct income and taxes due thereon:

a. During calendar year 1998, defendant DAVID R. WILLIAMS caused his employer to fail to withhold federal income taxes from the $133,860 in wages and other compensation paid to defendant WILLIAMS.

b. On or about April 15, 1999, defendant DAVID R. WILLIAMS failed to file a U.S. individual income tax return for tax year 1998. All in violation of Title 26, United States Code, Section 7201.

TAX EVASION

(Count 3)

1. Paragraph 1 of Count 1 of this indictment is realleged and hereby incorporated by reference in Count 3 as though fully set forth herein.

2. On or about April 15, 2000, within the Southern District of California, defendant DAVID R. WILLIAMS, well knowing and believing that during

the calendar year 1999 he and his spouse had substantial taxable income on which a substantial tax, imposed by the provisions of Title 26 of the United States Code, was due and owing to the United States, did willfully attempt to evade and defeat said tax by, among other things, committing the following affirmative acts of evasion, designed to conceal from and mislead proper officers of the United States as to their true and correct income and taxes due thereon:

a. During calendar year 1999, defendant DAVID R. WILLIAMS caused his employer to fall to withhold federal income taxes from the $210,669 in wages and other compensation paid to defendant WILLIAMS.

b. On or about April 15, 2000, defendant DAVID R. WILLIAMS failed to file a U.S. individual income tax return for tax year 1999. All in violation of Title 26, United States Code, Section 7201.

TAX EVASION

(Count 4)

1. Paragraph 1 of Count 1 of this indictment is realleged and hereby incorporated by reference in Count 4 as though fully set forth herein.

2. On or about April 15, 2001, within the Southern District of California, defendant DAVID R. WILLIAMS, well knowing and believing that during the calendar year 2000 he and his spouse had substantial taxable income on which a substantial tax, imposed by the provisions of Title 26 of the United

States Code, was due and owing to the United States, did willfully attempt to evade and defeat said tax by, among other things, committing the following affirmative acts of evasion, designed to conceal from and mislead proper officers of the United States as to their true and correct income and taxes due thereon:

a. During calendar year 2000, defendant DAVID R. WILLIAMS caused his employer to fail to withhold federal income taxes from the $212,070 in wages and other compensation paid to defendant WILLIAMS.

b. On or about April 15, 2001, defendant DAVID R. WILLIAMS failed to file a U.S. individual income tax return for tax year 2000. All in violation of Title 26, United States Code, Section 7201.

DATED: April 13, 2004.

A TRUE BILL:

/s/_____
Foreperson

CAROL C. LAM
United States Attorney

By. /s/_____
EDWARD P. ALLARD, III
Assistant U.S. Attorney

APPENDIX G

TITLE 26 - INTERNAL REVENUE CODE
Subtitle F - Procedure and Administration
CHAPTER 75 - CRIMES, OTHER OFFENSES, AND FORFEITURES
Subchapter A - Crimes
PART I - GENERAL PROVISIONS

Sec. 7201. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Sec. 7203. Willful failure to file return, supply information, or pay tax

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties

provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

Sec. 7207. Fraudulent returns, statements, or other documents

Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047(b), section 6104(d), or subsection (i) or (j) of section 527 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

APPENDIX H

UNITED STATES CONSTITUTION

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be

compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

APPENDIX I

United States Court of Appeals
9th Circuit Rule 27-1

ADVISORY COMMITTEE NOTES:

(3) Motions Acted on by Motions Panels.

(c) Procedures for Disposition of Motions by the Motions Panel. All three judges of the motions panel participate in ruling on motions that dispose of the appeal. Other substantive motions are presented to two judges; if in agreement, they decide the motion. The third judge participates only if

(i) one of the other members of the panel is disqualified or is otherwise unavailable;
(ii) the other members of the panel disagree on the disposition of a motion; or
(iii) he or she is requested to participate by the other members of the panel.

The motions panel sits in San Francisco approximately every ten days. Motions are presented orally to the panel by the motions attorneys or court law clerks when the panel sits. For complex motions, the motions attorneys or court law clerks may prepare and transmit to the panel in advance bench memoranda, the moving papers and relevant portions of the record.

Motions are referred by the clerk's office to the motions attorneys, who transmit them to the judges of the motions panel. If necessary, emergency motions are acted on by telephone. (*See* Cir. R. 27-3 through 27-4 and Advisory Committee Notes thereto.)